



A-570-803

Scope Inquiry

Public Document

IA/NME/IX: PW

October 29, 2007

FOR PUBLIC FILE

MEMORANDUM TO:

Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

FROM:

James Doyle
Director, Office IX
Import Administration

REGARDING:

Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Scope Ruling, Fiskars Brands Inc.

Summary

Pursuant to section 351.225(k)(1) of the Department's regulations the Department of Commerce (the "Department") determines that Fiskars Brands Inc.'s ("Fiskars") machetes¹ and brush axe are outside the scope of the antidumping duty orders covering one of the four classes or kinds of merchandise of heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). See *Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China*, 56 FR 6622 (February 19, 1991) ("HFHT Orders").

Background

On June 22, 2007, Fiskars requested that the Department determine whether its machetes and brush axe are within the scope of the HFHT Orders. See Fiskars' June 22, 2007 Scope Request ("Fiskars' Request") at 1. According to Fiskars, these products are produced using a stamping process and not a hot forging process. See Fiskars' Request at 3. On September 14, 2007 the Department issued a supplemental questionnaire to Fiskars, which Fiskars responded to on September 20, 2007.

Petitioners did not submit any comments on Fiskars' Request.

Fiskars' Scope Request

Fiskars states that the Department must consult the final scope language as the primary source in

¹ Fiskars' scope request covers its machete and its "gator" machete. Fiskars' machete is 22" in length and has a fine edge blade. Fiskars' gator machete is 18" in length and features a fine edge blade and a saw blade.



making its scope ruling. See *Tianjin Machinery Import & Export v. United States*, 394 F. Supp. 2d 1369, 1373 (CIT 2005) (“*Tianjin*”), citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (Fed. Cir. 2002) (“*Duferco*”).² Fiskars argues that in *Tianjin*, the CIT determined that the Department’s construction of the scope language included only forged hand tools and was consistent with the plain meaning of the scope language. *Id.* Fiskars asserts that the characteristic that actually defines the merchandise as within the scope of the order is the manufacture of the merchandise through a hot forge operation. Thus, Fiskars contends that products made through a stamping process are by definition excluded from the scope.

Fiskars argues that in a stamping process ambient sheet metal is punched and formed into desired shapes and sizes with the aid of a stamping die loaded on a stamping press. See Fiskars’ Request at 4. Fiskars contends that in a stamping process the ambient sheet metal is fed into a press in one direction, producing a two-dimensional cross-section and that the grain of the metal is not reoriented. See Fiskars’ Request at 5. According to Fiskars, during a forging process carbon steel is heated and shaped by plastic deformation while applying compressive force, generally in the form of repeated hammer blows or using a power hammer press. *Id.* at 5. Fiskars argues that the forging process produces a three-dimensional part and refines the grain structure of the metal, orienting it in the direction of the principal stresses to be encountered. *Id.* Therefore, according to Fiskars, the stamping and forging processes are distinct because the inputs are different (hot material for forging and cool/ambient for stamping) and the nature of the output are different (wholly intact material for forging and cut-out material from stamping).

Fiskars notes that the scope language states that the steel input into the subject merchandise is heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product and shape. See *HFHT Orders* at 6623. Fiskars contends that carbon steel is forged at temperatures between 2,100^o to 2,300^o F. See Fiskars’ Request at 5. Fiskars argues that its machetes are manufactured using a stamping process: the blade of the machete is stamped from strips of carbon steel, ground to specifications, de-burred, heat treated, oxidized and sharpened. See Fiskars’ Request at 5-6. Fiskars claims that the only time heat is used in the production process of its machetes is after the metal has been stamped when the machetes are heat treated to strengthen the metal at temperatures between 1,562^o F to 1,580^o F. See Fiskars’ Request at 6. Fiskars argues that at no point during the production process of its machetes is forging equipment used.

Fiskars also asserts that its brush axe is manufactured using a stamping process. Fiskars contends that the blade of the brush axe is stamped from sheet metal. According to Fiskars, the

² Fiskars contends that the Department’s *Import Traders* ruling, regarding stamped skinning axes, is not applicable to this request because it was issued before *Duferco*. See *Final Scope - Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China - Request by Import Traders, Inc. for a Ruling on Skinning Axes*, dated March 8, 2001 (“*Import Traders*”). According to Fiskars, in *Import Traders* the Department incorrectly concluded that the scope was not limited to forged hand tools, relying on the Petition and the International Trade Commission’s (“ITC”) injury report rather than the language of the scope itself.

stamping dies are heated from a range of 752^oF to 2,192^o F in order to relieve the pressure on the dies due to the thickness of the sheet metal. *See* Fiskars' Request at 6. Fiskars argues that this is the only time during the brush axe production process in which heat is applied. Fiskars asserts that the temperature of the cutting dies reaches a maximum temperature of 2,192^o F because a temperature greater than this will cause the stamping dies to melt or deform. *Id.* Fiskars argues that at no point during the production process of its brush axe is forging equipment used.

Lastly, Fiskars asserts that its machetes and brush axe are commercially distinct from machetes and brush axes which are forged. Fiskars contends that its machetes and brush axe weigh approximately one pound, have small, light handles and are used for less arduous tasks such as clearing brush, unlike heavier forged machetes and brush axes.

Legal Framework

The regulations governing antidumping duty scope determinations can be found in section 351.225 of the Department's regulations. The Department's initial bases for determining whether a product is included within the scope of an order are the descriptions of the product contained in the petition, the less-than-fair-value ("LTFV") investigation, prior determinations of the Secretary (such as prior scope rulings), as well as the determinations of the ITC. *See* 19 CFR 351.225(d) and 351.225(k)(1). Of these, the language in the antidumping duty order is the "predicate for the interpretative process." *See Duferco* at 1097.

Scope determinations may take place with or without a formal scope inquiry. *See* 19 CFR 351.225(d) and 351.225(e). If the Department determines that the descriptions in the order, petition, LTFV investigation, and prior Department and ITC determinations are dispositive of the matter, it will issue a final scope ruling as to whether or not the merchandise in question is covered by the order. *See* 19 CFR 351.225(d). Conversely, where the descriptions of the merchandise contained in the petition, the LTFV investigation, and the determinations of the Secretary (including prior scope determinations) and the ITC are not dispositive, the Department will consider the additional factors set forth at 19 CFR 351.225(k)(2).

The additional factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. These factors are known commonly as the *Diversified Products* criteria. *See Diversified Products Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983) ("*Diversified Products*"). The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all record evidence before the Department.

Analysis

In the instant case, the Department has evaluated Fiskars' request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in the order, the petition, the initial investigation, and the determinations of the Secretary (including prior scope

determinations) and the ITC are dispositive with respect to Fiskars' machetes and brush axe. Therefore, for Fiskars' machetes and brush axe, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

In *Tianjin* the Department noted that the scope of the *HFHT Orders* states: "HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size." See *HFHT Orders* at 6622. The key element of this sentence is the part that identifies the production process used to produce subject merchandise: "HFHTs are manufactured through a hot forge operation..." *Id.* The remainder of the sentence, "in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size," merely describes the elements generally found within a typical forging production process. *Id.* The plain language of the key element of this sentence provides the basic characteristic of the merchandise covered by these orders, *i.e.*, that they are manufactured through a "forge operation." See *Tianjin* at 7. The Petition and the *ITC Report* likewise consistently refer to "heavy forged tools." See *Heavy Forged Hand Tools from the People's Republic of China, Determination of Injury*, USITC Publication 2357, February 1991 ("*ITC Report*") at A-3.

Consistent with *Tianjin*, the Department's *Cast Tamper Scope Ruling* specifically addressed whether a product that is not forged is subject to the *HFHT Orders*. See *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary, from James Doyle, Office Director, AD/CVD Operations, Office 9, Antidumping Duty Orders on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, Subject: Final Scope Ruling - Request by Olympic Industrial Inc., for a Scope Ruling on Cast Tampers*, (May 24, 2005) at 11 ("*Cast Tamper Scope Ruling*"). In the *Cast Tamper Scope Ruling* the Department found that because Olympia's cast tampers were made through a casting process and not made through a "hot forge operation" the cast tampers are not subject to the *HFHT Orders*. Similarly, in the *Log Splitter Scope Ruling* the Department found that because Agri-Fab's log splitting wedge was made through a welding process and not through a "hot forge operation" the log splitter is not subject to the *HFHT Orders*. See *Memorandum to Stephen J. Claeys Deputy Assistant Secretary, from James Doyle, Director, Office 9, Final Scope Rulings: Antidumping Duty Order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, (June 1, 2007) at 7 ("*Log Splitter Scope Ruling*").

Fiskars states that none of the processes identified in the *HFHT Orders* used to describe a "hot forge operation" are used in the production of its machetes and brush axe. See Fiskars' Request at 6. Fiskars argues that its machetes and brush axe are produced using a stamping process. According to Fiskars, its machetes and brush axe made from differing types of sheet metal which are stamped into the desired shape at ambient temperatures, unlike a forging process where the metal is "heated to forging temperature and formed to the final shape on forging equipment." See Fiskars' Request at 4-5; see also *HFHT Orders* at 6622. According to Fiskars, its machetes are heat treated only after the machete shape has been cut from sheet metal to strengthen the steel

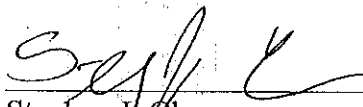
and these temperatures do not approach forging temperatures. See Fiskars' Request at 5-6. Additionally, Fiskars states that the only heat used in the brush axe production process is on the stamping dies. See Fiskars' Request at 6. Accordingly, we find that forging and stamping are two separate and distinct production processes. Therefore, consistent with *Tianjin, Cast Tampers Scope Ruling* and *Log Splitter Scope Ruling*, the Department finds that, because Fiskars' machetes and brush axe are not made through a "hot forge operation," Fiskars' machetes and brush axe are not subject to the *HFHT Orders*.

Recommendation

In accordance with 19 CFR 351.225(k)(1), as discussed above, our review of the record of this scope inquiry, and the factual representations made by Fiskars, supports the conclusion that Fiskars' machetes and brush axe are outside the scope of the *HFHT Orders*. We recommend that the Department determine that Fiskars' machetes and brush axe are outside the scope of the antidumping duty orders on HFHTs from the PRC. If you agree, we will send a letter to interested parties enclosing this ruling and notify U.S. Customs and Border Protection of our determination.

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

10/29/07
Date

